

ELECTRONIC INFORMATION OR DATA PRIVACY

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions related to privacy of electronic information or data.

Highlighted Provisions:

This bill:

- defines terms;
- requires issuance of a search warrant to obtain certain electronic information or data;
- addresses notification that electronic information or data was obtained;
- provides for transmission of electronic information or data to a remote computing service, including restrictions on government entities;
- provides that the individual who transmits electronic information or data is the presumed owner of the electronic information or data; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-23c-102, as last amended by Laws of Utah 2016, Chapter 161

77-23c-103, as enacted by Laws of Utah 2014, Chapter 223

ENACTS:

77-23c-101.1, Utah Code Annotated 1953

77-23c-104, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

77-23c-101.2, (Renumbered from 77-23c-101, as enacted by Laws of Utah 2014, Chapter 223)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-23c-101.1** is enacted to read:

CHAPTER 23c. ELECTRONIC INFORMATION OR DATA PRIVACY ACT

77-23c-101.1. Title.

This chapter is known as the "Electronic Information or Data Privacy Act."

Section 2. Section **77-23c-101.2**, which is renumbered from Section 77-23c-101 is renumbered and amended to read:

[77-23c-101]. 77-23c-101.2. Definitions.

As used in this chapter:

(1) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(2) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(3) (a) "Electronic information or data" means information or data including a sign, signal, writing, image, sound, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(b) "Electronic information or data" includes the location information, stored data, or transmitted data of an electronic device.

(c) "Electronic information or data" does not include:

(i) a wire or oral communication;

(ii) a communication made through a tone-only paging device;

(iii) a communication from a tracking device; or

(iv) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of money.

~~(3)~~ (4) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

64 ~~[(4)]~~ (5) "Location information" means information concerning the location of an
65 electronic device that, in whole or in part, is generated or derived from or obtained by the
66 operation of an electronic device.

67 ~~[(5)]~~ (6) "Location information service" means the provision of a global positioning
68 service or other mapping, location, or directional information service.

69 ~~[(6)]~~ (7) "Remote computing service" means the provision of computer storage or
70 processing services by means of an electronic communications system.

71 Section 3. Section **77-23c-102** is amended to read:

72 **77-23c-102. Electronic information or data privacy -- Warrant required for**
73 **disclosure.**

74 (1) (a) Except as provided in Subsection (2), a government entity may not obtain
75 without a search warrant issued by a court upon probable cause:

76 (i) the location information, stored data, or transmitted data of an electronic device
77 ~~[without a search warrant issued by a court upon probable cause.]; or~~

78 (ii) electronic information or data transmitted by the owner of the electronic
79 information or data to a remote computing service.

80 (b) Except as provided in Subsection (1)(c), a government entity may not use, copy, or
81 disclose, for any purpose, the location information, stored data, ~~[or]~~ transmitted data of an
82 electronic device, or electronic information or data provided by a remote computing service,
83 that is not the subject of the warrant that is collected as part of an effort to obtain the ~~[location]~~
84 electronic information~~[, stored data,]~~ or ~~[transmitted]~~ data ~~[of the electronic device]~~ that is the
85 subject of the warrant in Subsection (1)(a).

86 (c) A government entity may use, copy, or disclose the transmitted electronic
87 information or data of an electronic device used to communicate with the electronic device that
88 is the subject of the warrant if the government entity reasonably believes that the transmitted
89 electronic information or data is necessary to achieve the objective of the warrant.

90 (d) The electronic information or data described in Subsection (1)(b) shall be destroyed
91 in an unrecoverable manner by the government entity as soon as reasonably possible after the
92 electronic information or data is collected.

93 (2) (a) A government entity may obtain location information without a warrant for an
94 electronic device:

- (i) in accordance with Section 53-10-104.5;
- (ii) if the device is reported stolen by the owner;
- (iii) with the informed, affirmative consent of the owner or user of the electronic device;
- (iv) in accordance with judicially recognized exceptions to warrant requirements; or
- (v) if the owner has voluntarily and publicly disclosed the location information.

(b) A prosecutor may obtain a judicial order as ~~defined~~ described in Section 77-22-2.5 for the purposes enumerated in Section 77-22-2.5.

(3) An electronic communication service provider or remote computing service provider, its officers, employees, agents, or other specified persons may not be held liable for providing information, facilities, or assistance in accordance with the terms of the warrant issued under this section or without a warrant pursuant to Subsection (2).

(4) (a) Notwithstanding Subsections (1) through (3), a government entity may receive and ~~utilize~~ use electronic information or data containing the location information of an electronic device from a non-government entity as long as the electronic information or data contains no information that includes, or may reveal, the identity of an individual.

(b) Electronic information or data collected in accordance with this ~~[subsection]~~ Subsection (4) may not be used for investigative purposes by a law enforcement agency.

Section 4. Section **77-23c-103** is amended to read:

77-23c-103. Notification required -- Delayed notification.

(1) Except as provided in Subsection (2), a government entity that executes a warrant pursuant to Subsection 77-23c-102(1)(a) shall, within 14 days after the day on which the operation concludes, issue a notification to the owner of the electronic device or electronic information or data specified in the warrant that states:

- (a) that a warrant was applied for and granted;
- (b) the kind of warrant issued;
- (c) the period of time during which the collection of the electronic information or data ~~[from the electronic device]~~ was authorized;
- (d) the offense specified in the application for the warrant;
- (e) the identity of the government entity that filed the application; and
- (f) the identity of the judge who issued the warrant.

(2) A government entity seeking a warrant pursuant to Subsection 77-23c-102(1)(a) may submit a request, and the court may grant permission, to delay the notification required by Subsection (1) for a period not to exceed 30 days, if the court determines that there is probable cause to believe that the notification may:

- (a) endanger the life or physical safety of an individual;
- (b) cause a person to flee from prosecution;
- (c) lead to the destruction of or tampering with evidence;
- (d) intimidate a potential witness; or
- (e) otherwise seriously jeopardize an investigation or unduly delay a trial.

(3) When a delay of notification is granted under Subsection (2) and upon application by the government entity, the court may grant additional extensions of up to 30 days each.

(4) Upon expiration of the period of delayed notification granted under Subsection (2) or (3), the government entity shall serve upon or deliver by first-class mail to the owner of the electronic device a copy of the warrant together with notice that:

- (a) states with reasonable specificity the nature of the law enforcement inquiry; and
- (b) contains:
 - (i) the information described in Subsections (1)(a) through (f);
 - (ii) a statement that notification of the search was delayed;
 - (iii) the name of the court that authorized the delay of notification; and
 - (iv) a reference to the provision of this chapter that allowed the delay of notification.

(5) A government entity is not required to notify the owner of the electronic device or electronic information or data if the owner is located outside of the United States.

Section 5. Section **77-23c-104** is enacted to read:

77-23c-104. Third party electronic information or data.

(1) An individual who transmits electronic information or data to a remote computing service is presumed to be the owner of the electronic information or data.

(2) The individual in Subsection (1) maintains a reasonable expectation of privacy in the electronic information or data stored by the remote computing service.

(3) Pursuant to Subsection 77-23c-102(1), a government entity may not obtain, use, copy, or disclose a person's electronic information or data stored by a remote computing service without first obtaining a warrant.

